

TITLE 370 STATE EGG BOARD

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## Final Rule

LSA Document #09-808(F)

## DIGEST

Amends [370 IAC 1-1-3](#), [370 IAC 1-3-2](#), and [370 IAC 1-4-2](#) and adds [370 IAC 1-11](#) and [370 IAC 1-12](#) to modify dating requirements, clarify inspection authority and repackaging requirements of shell eggs at retail, and to create a fee structure. Effective 30 days after filing with the Publisher.

[370 IAC 1-1-3](#); [370 IAC 1-3-2](#); [370 IAC 1-4-2](#); [370 IAC 1-11](#); [370 IAC 1-12](#)

SECTION 1. [370 IAC 1-1-3](#) IS AMENDED TO READ AS FOLLOWS:

**[370 IAC 1-1-3](#) Uniform grade standards; adoption of federal standards**

Authority: [IC 16-42-11-5](#)

Affected: [IC 16-42-11-5](#)

Sec. 3. Therefore (a) In the interest of maintaining uniform grade standards in Indiana, the state egg board hereby adopts the United States Standards, Grades, and Weight Classes for Shell Eggs promulgated by the United States Department of Agriculture (AMS 56) as the official standards for quality, grade, and weight classes for Indiana, including 7 CFR 57, Regulations Governing the Inspection of Eggs.

(b) Treated eggs, as defined in [IC 16-42-11](#):

- (1) have no recognized grade standards published by the United States Department of Agriculture; and
- (2) shall be exempt from quality and weight standards with the exception of tolerances for:

- (A) dirties;
- (B) checks;
- (C) leakers; and
- (D) loss;

as defined by United States Department of Agriculture publication (AMS 56).

*(State Egg Board; Reg 1, Title I, Sec 3; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; filed Nov 23, 1981, 9:30 a.m.: 5 IR 33, eff Jan 1, 1982; errata, 9 IR 779; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937; filed Jan 2, 2003, 10:03 a.m.: 26 IR 1542; readopted filed Sep 2, 2009, 11:37 a.m.: [20090930-IR-370090393RFA](#); filed Aug 27, 2010, 12:08 p.m.: [20100922-IR-370090808FRA](#))*

SECTION 2. [370 IAC 1-3-2](#) IS AMENDED TO READ AS FOLLOWS:

**[370 IAC 1-3-2](#) Consumer packages; date requirements**

Authority: [IC 16-42-11-5](#)

Affected: [IC 16-42-11-5](#)

Sec. 2. All eggs offered for sale in consumer packages (cases, boxes, baskets, or containers): shall:

- (1) shall be legibly dated (month and day or consecutive day of the year) the day the eggs were packed; and
- (2) shall bear an expiration date of ~~no~~ **not** more than thirty (30) days from date of pack, excluding date of pack; and

(3) may contain a "BEST BY", "BEST IF USED BY", or "USE BY" date in addition to the expiration date, which shall not exceed forty-five (45) days from the date of pack, excluding the date of pack.

Shell eggs labeled AA shall bear in distinctly legible form an expiration date of ~~no~~ **not** more than ~~ten (10)~~ **fifteen (15)** days from date of pack excluding date of pack. The expiration date shall be stated as the month and day, for example, April 3 or 4-3, preceded by the letters "EXP" or "SELL BY". Quality is best if sold by the expiration date.

*(State Egg Board; Reg 3, Title I, Sec 2; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 83; filed Nov 23, 1981, 9:30 a.m.: 5 IR 33, eff Jan 1, 1982; filed Feb 13, 1985, 1:57 p.m.: 8 IR 794; filed Feb 3, 1987, 2:00 p.m.: 10 IR 1225; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1776; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937; filed Jan 2,*

2003, 10:03 a.m.: 26 IR 1543; readopted filed Sep 2, 2009, 11:37 a.m.: [20090930-IR-370090393RFA](#); filed Aug 27, 2010, 12:08 p.m.: [20100922-IR-370090808FRA](#))

SECTION 3. [370 IAC 1-4-2](#) IS AMENDED TO READ AS FOLLOWS:

**[370 IAC 1-4-2](#) Removal of below standard eggs**

Authority: [IC 16-42-11-5](#)

Affected: [IC 16-42-11-5](#)

Sec. 2. Shell eggs offered for sale at retail or wholesale and found to be:

- (1) below the minimum standards and requirements of quality or weight, or both, for grade and size marked;
- (2) offered for sale after the expiration date calculated under [370 IAC 1-3-2](#); and
- (3) displayed or stored at a temperature exceeding the temperature requirements of [370 IAC 1-2](#);

shall be removed at the time of inspection.

(State Egg Board; Reg 4, Title II, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 84; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1777; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937; filed Jan 2, 2003, 10:03 a.m.: 26 IR 1545; readopted filed Sep 2, 2009, 11:37 a.m.: [20090930-IR-370090393RFA](#); filed Aug 27, 2010, 12:08 p.m.: [20100922-IR-370090808FRA](#))

SECTION 4. [370 IAC 1-11](#) IS ADDED TO READ AS FOLLOWS:

**Rule 11. Repackaging of Eggs at Retail**

**[370 IAC 1-11-1](#) Definitions**

Authority: [IC 16-42-11-5](#)

Affected: [IC 16-42-11-5](#)

Sec. 1. The following definitions apply throughout this rule:

(1) "Brand" means any designation that differentiates a consumer package of eggs, such as, but not limited to, the following:

- (A) Production method.
- (B) Nutritional claim.
- (C) Private label brands.
- (D) Shell color.

(2) "Dirty egg" means an individual egg that has an unbroken shell with adhering dirt or foreign material, or prominent stains. Yolk is considered foreign material.

(3) "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

(4) "Lot consolidation" means the removal of damaged eggs from consumer labeled cartons and replacement of the damaged eggs with eggs of the same grade, size, brand, pack date, and packing facility.

(5) "Repacking" means changing the identity of a lot of shell eggs by removing them from the original container labeled by a packer and placing them into another container not labeled by the packer at the point of origin with the same grade, size, brand, pack date, and packing facility.

(State Egg Board; [370 IAC 1-11-1](#); filed Aug 27, 2010, 12:08 p.m.: [20100922-IR-370090808FRA](#))

**[370 IAC 1-11-2](#) Repacking of eggs**

Authority: [IC 16-42-11-5](#)

Affected: [IC 16-42-11-5](#)

**Sec. 2. (a) The repacking of eggs is not allowed in a retail facility unless the facility performing the**

repacking is registered with the United States Department of Agriculture as a grading station under the Egg Products Inspection Act, 7 CFR Part 57.

(b) Lot consolidation at a retail location is allowed. Eggs utilized for the purposes of lot consolidation cannot be classified as dirty or a leaker. Such product must be disposed of and not offered to the consumer.

(State Egg Board; [370 IAC 1-11-2](#); filed Aug 27, 2010, 12:08 p.m.: [20100922-IR-370090808FRA](#))

SECTION 5. [370 IAC 1-12](#) IS ADDED TO READ AS FOLLOWS:

**Rule 12. Establishment of Permit/Registration Requirements and Associated Fee Structure**

**[370 IAC 1-12-1](#) Definitions**

Authority: [IC 16-42-11-10.2](#)

Affected: [IC 16-42-11-1.1](#)

Sec. 1. The following definitions apply throughout this rule:

- (1) "Distribution facility" means any physical location that stores eggs and is the point of origination for eggs shipped to:
  - (A) retailers;
  - (B) hotels;
  - (C) restaurants;
  - (D) hospitals;
  - (E) nursing homes;
  - (F) schools; or
  - (G) state or federal institutions.
- (2) "Farmers market retailer" means any producer who sells eggs directly to the consumer, which they produced, at a common facility that meets the definition of a farmers market under [IC 16-42-11-1.1](#).
- (3) "Person" means any:
  - (A) individual;
  - (B) partnership;
  - (C) association;
  - (D) business trust;
  - (E) corporation; or
  - (F) organized group of persons, regardless of whether the group is incorporated.
- (4) "Retailer" means any person who sells eggs for human consumption and not for resale.
- (5) "Wholesaler" means any:
  - (A) person engaged in buying eggs for human consumption for resale to:
    - (i) retailers;
    - (ii) hotels;
    - (iii) restaurants;
    - (iv) hospitals;
    - (v) nursing homes;
    - (vi) schools; or
    - (vii) state or federal institutions;
  - (B) operators of multiple unit retail outlets engaged in the distribution of eggs to their own retail units; or
  - (C) producers who sell or deliver eggs to:
    - (i) retailers;
    - (ii) hotels;
    - (iii) restaurants;
    - (iv) hospitals;
    - (v) nursing homes;
    - (vi) schools; or
    - (vii) state or federal institutions.

(State Egg Board; [370 IAC 1-12-1](#); filed Aug 27, 2010, 12:08 p.m.: [20100922-IR-370090808FRA](#))

**370 IAC 1-12-2 Permits and fee structure**Authority: [IC 16-42-11-10.2](#)Affected: [IC 16-42-11-10.2](#)

**Sec. 2. (a)** Every wholesaler or retailer selling eggs shall, before July 1 of each year, file with the state egg board a statement setting forth the fact that the wholesaler or retailer desires to sell eggs. The statement shall designate:

- (1) the name of the wholesaler or retailer desiring to register the location of the wholesaler's or retailer's principal office; and
- (2) any location where eggs are stored or distributed if that location is different from the principal office.

**(b)** The state egg board shall require and collect from each retail store or unit of retailing a fee based upon the average number of cases of eggs sold each week during the preceding calendar year, as follows:

<b>Farmers Market Retailer</b>	<b>\$20</b>
<b>Cases/Week</b>	
< 5	\$30
5 – 50	\$50
>50	\$100

**(c)** The state egg board shall require and collect from each wholesaler or distribution facility at the time of registration a fee based upon the average number of cases of eggs sold to retailers, hotels, restaurants, hospitals, nursing homes, schools, or state or federal institutions each week during the preceding calendar year, as follows:

<b>Cases/Week</b>	
<5	\$50
>5 – 250	\$90
>250 – 500	\$120
>500 – 1,000	\$150
>1,000	\$200

**(d)** The state egg board shall require and collect from each wholesaler or distribution facility at the time of registration a deposit equal to the product obtained by using a:

- (1) multiplier of eleven cents (\$0.11); and
- (2) multiplicand that is the number of cases of eggs sold in that quarter of the immediately preceding five (5) calendar quarters in which the highest number of cases of eggs were sold by the wholesaler or distribution facility to:
  - (A) retailers;
  - (B) hotels;
  - (C) restaurants;
  - (D) hospitals;
  - (E) nursing homes;
  - (F) schools; or
  - (G) state or federal institutions.

However, if the entity does not have a five (5) quarter history, the state egg board shall fix the deposit at a reasonable amount, as determined by wholesaler's or distributor's quarterly sales projections.

**(e)** All registered wholesalers or distribution facilities must make application to the state egg board for a permit to report the case volume of eggs sold in Indiana and submit a fee of eleven cents (\$0.11) for each thirty (30) dozen eggs or a fraction of that number of the volume reported. In applying for a permit, the applicant must agree to do the following:

- (1) Keep records the state egg board considers necessary to indicate accurately the case volume of eggs sold in Indiana.

(2) Grant the state egg board permission to:

(A) examine those records; and

(B) verify the statement of the number and grade of eggs reported.

(3) Report under oath to the state egg board, on forms furnished by the state egg board, the number of eggs reported during the period covered.

(f) Registered wholesalers who distribute fewer than five (5) cases per week, based upon the average number of cases of eggs sold to:

(1) retailers;

(2) hotels;

(3) restaurants;

(4) hospitals;

(5) nursing homes;

(6) schools; or

(7) state or federal institutions;

each week during the preceding calendar year, are not required to pay the deposit in subsection (d) or the case volume fees in subsection (e). They are required to report monthly volumes of eggs sold on a semiannual basis.

(g) Should a farmers market retailer choose to distribute fewer than five (5) cases of eggs per week of their own production to retailers, hotels, restaurants, hospitals, nursing homes, schools, or state or federal institutions, the following combination permit will be available:

**Farmers Market Retailer/Wholesaler**

**\$50**

(State Egg Board; [370 IAC 1-12-2](#); filed Aug 27, 2010, 12:08 p.m.: [20100922-IR-370090808FRA](#))

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